

REMARKS

Claims 1-6 are pending in this application. By this Amendment, claims 1-3 and 5 are amended; and claim 6 is added. No new matter is added. Claims 1 and 6 are independent claims. Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested.

Applicant notes with appreciation the Examiner's acknowledgement that certified copies of all priority documents have been received from the International Bureau. Action summary at 12.

Applicant also notes with appreciation that the present action indicates the drawings have been accepted by the Examiner. Action, summary at 10.

Applicant also notes with appreciation the Examiner's consideration of the references cited in the Information Disclosure Statement filed on December 2, 2004.

Claim Rejections - 35 U.S.C. § 103

Claims 1 and 3 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,829,459 to Milocco et al. ("Milocco") in view of U.S. Patent 5,660,193 to Archer et al. ("Archer") and U.S. Patent 4,641,671 to Nogi et al. ("Nogi"). Applicant respectfully traverses this rejection for the reasons discussed below.

In order establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), the U.S. Supreme Court in *KSR Int'l Co. v. Teleflex, Inc.*¹ noted that the rejection must establish a reasoning that it would have been obvious for one of ordinary skill in the art to have combined the teachings of the cited document(s). One way to establish this would be to show "some

¹ 550 U.S. at ___, 82 USPQ2d at 1396 (2007).

articulated reasoning with some rationale underpinning to support the legal conclusion of “obviousness” and “identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.”² In addition, the cited document(s), when combined or modified, must teach or suggest all of the claim limitations of the rejected claims.³

Applicant respectfully submits that the proposed combination of references does not meet these criteria. In particular, the rejection fails to demonstrate that one of ordinary skill in the art would have combined the teachings of the Milocco, the Archer and the Nogi references in the manner used to reject the claims, and the applied references fail to teach and suggest all of the claim elements.

For example, in the outstanding Office Action, the rejection is based on an assertion that:

[a]ll of the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would yield predictable results to one of ordinary skill in the art at the time of the invention, meaning that the container can be stored under the wash compartment as taught by ‘193 in apparatus ‘459 to yield the predictable result of housing the recirculation rinse containers under the wash compartment.⁴

Applicant respectfully submits, however, that if the proposed modification or combination of the prior art would change the *principle of operation* of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.⁵

Applicant respectfully submits that the proposed combination of the Milocco and the Archer references would require a substantial reconstruction and redesign as well as a change in the basic principle under which the Milocco reference construction was designed to operate. For

² *Id.*

³ *In re Vaeck*, 947, F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

⁴ See Office Action mailed February 4, 2008, page 3, paragraph 1.

⁵ *In re Ratti*, 270 F.2d 810, 23 USPQ 349 (CCPA 1959).

example, the Milocco reference discloses that the reservoir 6 (recirculation rinsing container as alleged by the Examiner) is arranged outside the washing tank, preferable, in a hollow space provided between the washing tank and the outer casing of the machine (*col. 2, lines 12-16 of the Milocco reference*). Accordingly, the Milocco reference is based on a principle of gravity, i.e., water, stored in the reservoir 6, is to flow by gravity into the washing tank. As such, one skilled in the art would be discouraged to rearrange the reservoir 6 of the Milocco reference and place the reservoir “under” the washing tank, because water cannot be flowed into the washing tank. Therefore, it will be difficult to modify or redesign the reservoir of the Milocco reference, without destroying the reference.

In addition, Applicant respectfully submits that “the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggest the desirability of the combination.”⁶ For example, the Archer reference explicitly discloses that the removal of the cleaning liquid out of the cleaning liquid tank 9 to the cleaning liquid circulation system is not shown (*see col. 4, lines 47-49 of the Archer reference*). Accordingly, there is no mention or disclosure in the Archer reference of recirculating the rinsing liquid as taught in the claimed invention. Therefore, the rejection failed to articulate a proper rationale to support an obviousness rejection.

Further, even if, *arguendo*, the teachings of the Milocco, the Archer, and the Nogi references were to be combined, they would nonetheless fail to teach each and every element of the rejected claims. In particular, Applicant respectfully submits that the Milocco, the Archer, and the Nogi references, whether alone or in combination, fail to teach or suggest, *inter alia*, “the collecting means having a first outlet means which is adapted to flow liquid collected by the collecting means to the recirculation rinsing container, and a second outlet means which is

adapted to flow liquid collected by the collecting means to the dishwashing container when the recirculation rinsing container is filled up,” as recited in claim 1.

In the outstanding Office Action, the Examiner allegedly asserted that the Nogi reference discloses a rinse tank (part 13) and that dishwashing container can have multiple outlets (parts 12a and 35). Applicant respectfully submits, however, that the Nogi reference fails to disclose or suggest outlet means adapted to flow liquid collected by the collecting means to the recirculation rinsing container as taught in the claimed invention. In particular, the Nogi reference merely discloses that the solution tank 12 has two outlets, an overflow pipe 35, and a valve-operated opening 12a in the tank wall. The opening 12a is part of a three-way valve 24 with a port 24a. When this port is opened, washing solution can flow from the solution tank 12 to the suction port of the pump 27, and thus washing solution cannot flow from the tank 12 to the hot water storage tank 13. The hot water storage tank 13 is only supplied with water via supply pipe 21 (*see col. 4, lines 33-63 of the Nogi reference*). Hence, there is no outlet means in the Nogi reference to flow liquid collected by the collecting means to the recirculation rinsing container. Therefore, because the proposed combination of the Milocco, the Archer, and the Nogi references, whether alone or in combination, fails to teach or suggest *all* of the elements of claim 1, no *prima facie* case of obviousness has been established.

Further, in the outstanding Office Action, the Examiner asserts that “rearranging parts of an invention involves only routine skill in the art.”⁷ Applicant respectfully submits, however, that rearranging the parts of the Milocco, the Archer, and the Nogi references would not derive at the claimed invention. For example, Applicant’s invention relates to arranging the dishwashing container 5 and the recirculation container 7 under the dishwashing compartment 2 so that a

⁶ *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

⁷ See Office Action mailed February 4, 2008, page 3, first full paragraph, and page 4, lines 1-2.

collecting plate 8 may flow liquid collected thereon to a first opening 9. When the recirculation rinsing container 7 is wholly or partly emptied, the liquid collected by the collecting plate 8 may flow down in the first opening 9 and into the recirculation rinsing container 7. However, when the recirculation rinsing container 7 is filled up with liquid, i.e. when the liquid level in the container 7 and its inlet tube 9' is on a level with the collecting plate 8, no further liquid may flow down in the first opening 9, which may cause the liquid collected by the collecting plate 8 to pass the first opening 9 and flow down in the second opening 10 and into the dishwashing container 5, via hole 11 in frame 12. Therefore, Applicant respectfully submits that the Milocco, the Archer, and the Nogi references, individually or in combination, would not derive at the claimed invention.

In view of the above, Applicant respectfully submits that one of ordinary skill in the art would not have combined the teachings of the Milocco, the Archer, and the Nogi references in the manner used to reject the claims, and that the proposed combination of the Milocco, the Archer, and the Nogi references fails to teach or suggest *all* of the elements of claim 1. Thus, no *prima facie* case of obviousness has been established. Accordingly, claim 1 is allowable over the Milocco, the Archer, and the Nogi references. Dependent claim 3 depends from claim 1 and is allowable for at least the reasons that claim 1 is allowable. Therefore, Applicant respectfully requests that the rejection of claims 1 and 3 under 35 U.S.C. § 103(a) be favorable reconsidered and withdrawn.

Claims 2, 4, and 5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Milocco in view of Archer and Nogi as applied to claim 1 above, and further in view of U.S. Patent 3,989,054 to Mercer and U.S. Patent 5,992,954 to Becker. Applicant respectfully traverses this rejection for the reasons discussed below.

Applicant respectfully submits that the Mercer and the Becker references relied upon to reject claims 2, 4, and 5, fail to provide the teachings, discussed above, that are missing from the Milocco, the Archer, and the Nogi references. Claims 2, 4, and 5, depend, either directly or indirectly, from claim 1. Accordingly, the proposed combination of the Mercer and the Becker references with the Milocco, the Archer, and the Nogi references fails to disclose or suggest all elements of the rejected claims for at least the reasons set forth above. Applicant respectfully submit that claims 2, 4, and 5, are in condition for allowance, and respectfully request that the Examiner reconsider and withdraw the rejection.

New Claim

Claim 6 has been added in an effort to provide further, different protection for Applicants' invention. Claim 6 is allowable for at least for the similar reasons discussed above regarding claim 1. No new matter is added.

CONCLUSION

In view of the above remarks and amendments, Applicant respectfully submits that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. Further, the above remarks demonstrate the failings of the outstanding rejections, and are sufficient to overcome the rejections. However, these remarks are not intended to, nor need they, comprehensively address each and every reason for the patentability of the claimed subject matter over the applied prior art. Accordingly, Applicant does not contend that the claims are patentable solely on the basis of the particular claim elements discussed above.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

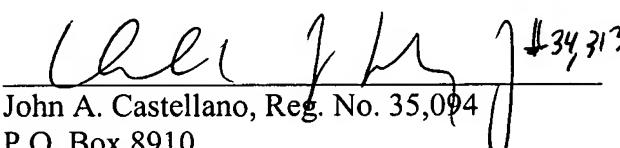
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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